

1 **UNITED STATES DISTRICT COYRT**
2 **EASTERN DISTRICT OF NEW YORK**

3
4 TAKHARA SMITH

5 Plaintiff,

6 vs.

7 ALL CAPITAL MOTORS INC., and WESTLAKE
8 SERVICES LLC, dba WESTLAKE FINANCIAL
9 SERVICES

10 Defendant,

Index No.: 22CV5566

ANSWER

11 **ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF’S COMPLAINT**

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13 Defendants, All Capital Motors, Inc., (“Defendant”) hereby respectfully submits its
14 Answer to Plaintiff’s Complaint, pursuant to Rule 8 of the Federal Rules of Civil Procedure. All
15 allegations not specifically admitted by this Answer are generally denied.
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18 **Introduction**

- 19 1. Paragraph 1 of Plaintiff’s Complaint September 16, 2022 (hereinafter referred to as
20 “Complaint”) requires no affirmative answer, to the extent that it does, Defendants deny all
21 allegations set forth therein.
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23 **Parties**

- 24 2. Defendant neither admits nor denies the allegations contained in Paragraph 2 of Plaintiff’s
25 Complaint. Such, Defendant leaves Plaintiff to its proofs.
26 3. Defendant admits the allegations contained in Paragraph 3 of Plaintiff’s Complaint.
27 4. Defendant neither admits nor denies the allegations contained in Paragraph 4 of Plaintiff’s
28 Complaint. Such, Defendant leaves Plaintiff to its proofs.
29 5. Defendant admits the allegations contained in Paragraph 5 of Plaintiff’s Complaint.
30 6. Denied, the allegations in this paragraph 6 refer to parties other than Defendant, and
31 therefore, no response is required.
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1 7. Denied, the allegations in this paragraph 7 refer to parties other than Defendant, and
2 therefore, no response is required.

3 8. Denied, the allegations in this paragraph 8 refer to parties other than Defendant, and
4 therefore, no response is required.

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6 9. Defendant neither admits nor denies the allegations contained in Paragraph 9 of Plaintiff's
7 Complaint. Such, Defendant leaves Plaintiff to its proofs.

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10 **Jurisdiction and Venue**

11 10. Denied, these allegations constitute conclusions of law to which no response is required.

12 11. Denied, these allegations constitute conclusions of law to which no response is required.

13 12. Denied, these allegations constitute conclusions of law to which no response is required.

14 13. Denied, these allegations constitute conclusions of law to which no response is required.

15 14. Denied in part, admitted in part. It is admitted that Defendant conducts business in the State
16 of New York. The remaining allegations constitute conclusions of law and refer to parties
17 other than Defendant and, therefore, no response is required.

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19 **As to Facts**

20 15. Defendant neither admits nor denies the allegations contained in Paragraph 15 of Plaintiff's
21 Complaint. As Defendant is without sufficient knowledge or information to form a belief as
22 to the truth of said allegations; such, Defendant leaves Plaintiff to its proofs.

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24 16. Defendant neither admits nor denies the allegations contained in Paragraph 16 of Plaintiff's
25 Complaint. As Defendant is without sufficient knowledge or information to form a belief as
26 to the truth of said allegations; such, Defendant leaves Plaintiff to its proofs.

27 17. Defendant neither admits nor denies the allegations contained in Paragraph 17 of Plaintiff's
28 Complaint. As Defendant is without sufficient knowledge or information to form a belief as
29 to the truth of said allegations; such, Defendant leaves Plaintiff to its proofs.
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- 1 18. Defendant neither admits nor denies the allegations contained in Paragraph 18 of Plaintiff's
2 Complaint. As Defendant is without sufficient knowledge or information to form a belief as
3 to the truth of said allegations; such, Defendant leaves Plaintiff to its proofs.
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- 5 19. Defendant neither admits nor denies the allegations contained in Paragraph 19 of Plaintiff's
6 Complaint; such, Defendant leaves Plaintiff to its proofs.
- 7 20. Defendant neither admits nor denies the allegations contained in Paragraph 20 of Plaintiff's
8 Complaint; such, Defendant leaves Plaintiff to its proofs.
- 9 21. Defendant neither admits nor denies the allegations contained in Paragraph 21 of Plaintiff's
10 Complaint; such, Defendant leaves Plaintiff to its proofs.
- 11 22. Defendant neither admits nor denies the allegations contained in Paragraph 22 of Plaintiff's
12 Complaint; such, Defendant leaves Plaintiff to its proofs.
- 13 23. Defendant neither admits nor denies the allegations contained in Paragraph 23 of Plaintiff's
14 Complaint; such, Defendant leaves Plaintiff to its proofs.
- 15 24. Defendant neither admits nor denies the allegations contained in Paragraph 24 of Plaintiff's
16 Complaint; such, Defendant leaves Plaintiff to its proofs.
- 17 25. Defendant neither admits nor denies the allegations contained in Paragraph 25 of Plaintiff's
18 Complaint; such, Defendant leaves Plaintiff to its proofs.
- 19 26. Defendant neither admits nor denies the allegations contained in Paragraph 26 of Plaintiff's
20 Complaint; such, Defendant leaves Plaintiff to its proofs.
- 21 27. Defendant neither admits nor denies the allegations contained in Paragraph 27 of Plaintiff's
22 Complaint; such, Defendant leaves Plaintiff to its proofs.
- 23 28. Defendant neither admits nor denies the allegations contained in Paragraph 28 of Plaintiff's
24 Complaint; such, Defendant leaves Plaintiff to its proofs.
- 25 29. Defendant neither admits nor denies the allegations contained in Paragraph 29 of Plaintiff's
26 Complaint; such, Defendant leaves Plaintiff to its proofs.
- 27 30. Defendant neither admits nor denies the allegations contained in Paragraph 30 of Plaintiff's
28 Complaint; such, Defendant leaves Plaintiff to its proofs.
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- 1 31. Defendant neither admits nor denies the allegations contained in Paragraph 31 of Plaintiff's
2 Complaint; as the documents speak for themselves.
- 3 32. Defendant neither admits nor denies the allegations contained in Paragraph 32 of Plaintiff's
4 Complaint; as the documents speak for themselves.
- 5 33. Defendant neither admits nor denies the allegations contained in Paragraph 33 of Plaintiff's
6 Complaint; such, Defendant leaves Plaintiff to its proofs.
- 7 34. Defendant neither admits nor denies the allegations contained in Paragraph 34 of Plaintiff's
8 Complaint; such, Defendant leaves Plaintiff to its proofs.
- 9 35. Defendant neither admits nor denies the allegations contained in Paragraph 35 of Plaintiff's
10 Complaint. As Defendant is without sufficient knowledge or information to form a belief as
11 to the truth of said allegations; such, Defendant leaves Plaintiff to its proofs.
- 12 36. Defendant neither admits nor denies the allegations contained in Paragraph 36 of Plaintiff's
13 Complaint; such, Defendant leaves Plaintiff to its proofs.
- 14 37. Defendant neither admits nor denies the allegations contained in Paragraph 37 of Plaintiff's
15 Complaint. As Defendant is without sufficient knowledge or information to form a belief as
16 to the truth of said allegations; such, Defendant leaves Plaintiff to its proofs.
- 17 38. Defendant neither admits nor denies the allegations contained in Paragraph 38 of Plaintiff's
18 Complaint. As Defendant is without sufficient knowledge or information to form a belief as
19 to the truth of said allegations; such, Defendant leaves Plaintiff to its proofs.
- 20 39. Defendant neither admits nor denies the allegations contained in Paragraph 39 of Plaintiff's
21 Complaint; such, Defendant leaves Plaintiff to its proofs.
- 22 40. Defendant neither admits nor denies the allegations contained in Paragraph 40 of Plaintiff's
23 Complaint; such, Defendant leaves Plaintiff to its proofs.
- 24 41. Denied. After reasonable investigation, Defendant is without sufficient knowledge or
25 information to form a belief as to the truth of these allegations and therefore, said
26 allegations are denied and strict proof thereof is demanded. The "disclosures" referenced
27 were not attached to Plaintiff's Complaint.
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1 42. Defendant neither admits nor denies the allegations contained in Paragraph 42 of Plaintiff's
2 Complaint; such, Defendant leaves Plaintiff to its proofs.

3 43. Defendant neither admits nor denies the allegations contained in Paragraph 43 of Plaintiff's
4 Complaint; such, Defendant leaves Plaintiff to its proofs.

5 44. Defendant neither admits nor denies the allegations contained in Paragraph 44 of Plaintiff's
6 Complaint; such, Defendant leaves Plaintiff to its proofs.

7 45. Defendant neither admits nor denies the allegations contained in Paragraph 45 of Plaintiff's
8 Complaint; such, Defendant leaves Plaintiff to its proofs.

9 46. Defendant neither admits nor denies the allegations contained in Paragraph 46 of Plaintiff's
10 Complaint; such, Defendant leaves Plaintiff to its proofs.

11 47. Defendant neither admits nor denies the allegations contained in Paragraph 47 of Plaintiff's
12 Complaint; such, Defendant leaves Plaintiff to its proofs.

13 48. Defendant neither admits nor denies the allegations contained in Paragraph 48 of Plaintiff's
14 Complaint; such, Defendant leaves Plaintiff to its proofs.

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19 **COUNT I**

20 49. Defendants incorporates herein by reference its responses to all facts and allegations
21 contained in Plaintiff's Complaint as if said responses are fully set forth at length herein.

22 50. Denied. This allegation constitutes conclusions of law to which no response is required.

23 51. Denied. This allegation constitutes conclusions of law to which no response is required.

24 52. Denied. Plaintiff unequivocally stated that they did receive the disclosures, in their
25 Complaint.

26 53. Defendant neither admits nor denies the allegations contained in Paragraph 53 (and its
27 subsections) of Plaintiff's Complaint; such, Defendant leaves Plaintiff to its proofs.

28 54. Defendant neither admits nor denies the allegations contained in Paragraph 54 of Plaintiff's
29 Complaint; such, Defendant leaves Plaintiff to its proofs.

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1 55. Defendant neither admits nor denies the allegations contained in Paragraph 55 of Plaintiff's
2 Complaint; such, Defendant leaves Plaintiff to its proofs.

3 56. The allegations set forth in paragraph 56 are conclusions of law, and require no affirmative
4 answer, to the extent that it does, Defendant denies the allegations set forth therein.

5 57. Denied, these allegations constitute conclusions of law, and therefore no response is
6 required. To the extent that it does, Defendant denies the allegations set forth therein.

7 58. Denied, these allegations constitute conclusions of law, and therefore no response is
8 required. To the extent that it does, Defendant denies the allegations set forth therein.

9 59. Denied, these allegations constitute conclusions of law, and therefore no response is
10 required. To the extent that it does, Defendant denies the allegations set forth therein.

11 COUNT II

12 60. Defendants incorporates herein by reference its responses to all facts and allegations
13 contained in Plaintiff's Complaint as if said responses are fully set forth at length herein.

14 61. Defendant neither admits nor denies the allegations contained in Paragraph 61 of Plaintiff's
15 Complaint; such, Defendant leaves Plaintiff to its proofs.

16 62. Denied, these allegations constitute conclusions of law, and therefore no response is
17 required. To the extent that it does, Defendant denies the allegations set forth therein.

18 63. Denied, these allegations constitute conclusions of law, and therefore no response is
19 required. To the extent that it does, Defendant denies the allegations set forth therein.

20 64. Denied, these allegations constitute conclusions of law, and therefore no response is
21 required. To the extent that it does, Defendant denies the allegations set forth therein.

22 65. Denied, these allegations constitute conclusions of law, and therefore no response is
23 required. To the extent that it does, Defendant denies the allegations set forth therein.

24 66. To the extent that paragraph 66 refers to Defendant, said paragraph is Denied, these
25 allegations constitute conclusions of law, and therefore no response is required. To the
26 extent that it does, Defendant denies the allegations set forth therein.

27 COUNT III

1 67. Defendants incorporates herein by reference its responses to all facts and allegations
2 contained in Plaintiff's Complaint as if said responses are fully set forth at length herein.

3 68. Denied, these allegations constitute conclusions of law, and therefore no response is
4 required. To the extent that it does, Defendant denies the allegations set forth therein.

5 69. Denied, these allegations constitute conclusions of law, and therefore no response is
6 required. To the extent that it does, Defendant denies the allegations set forth therein.

7 70. Denied, these allegations constitute conclusions of law, and therefore no response is
8 required. To the extent that it does, Defendant denies the allegations set forth therein.

9 71. Denied, these allegations constitute conclusions of law, and therefore no response is
10 required. To the extent that it does, Defendant denies the allegations set forth therein.

11 72. To the extent that paragraph 72 refers to Defendant, said paragraph is Denied, these
12 allegations constitute conclusions of law, and therefore no response is required. To the
13 extent that it does, Defendant denies the allegations set forth therein.

14 COUNT IV

15 73. Defendants incorporates herein by reference its responses to all facts and allegations
16 contained in Plaintiff's Complaint as if said responses are fully set forth at length herein.

17 74. Denied, these allegations constitute conclusions of law, and therefore no response is
18 required. To the extent that it does, Defendant denies the allegations set forth therein.

19 COUNT V

20 75. Defendants incorporates herein by reference its responses to all facts and allegations
21 contained in Plaintiff's Complaint as if said responses are fully set forth at length herein.

22 76. Defendant neither admits nor denies the allegations contained in Paragraph 76 of Plaintiff's
23 Complaint. Such, Defendant leaves Plaintiff to its proofs.

24 77. Defendant neither admits nor denies the allegations contained in Paragraph 77 of Plaintiff's
25 Complaint. Such, Defendant leaves Plaintiff to its proofs.

26 78. Defendant neither admits nor denies the allegations contained in Paragraph 78 of Plaintiff's
27 Complaint. Such, Defendant leaves Plaintiff to its proofs.

1 79. Defendant neither admits nor denies the allegations contained in Paragraph 79 of Plaintiff's
2 Complaint. Such, Defendant leaves Plaintiff to its proofs.

3 80. Denied, these allegations constitute conclusions of law, and therefore no response is
4 required. To the extent that it does, Defendant denies the allegations set forth therein.
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6 81. Denied, these allegations constitute conclusions of law, and therefore no response is
7 required. To the extent that it does, Defendant denies the allegations set forth therein.

8 82. To the extent that paragraph 82 refers to Defendant, said paragraph is Denied, these
9 allegations constitute conclusions of law, and therefore no response is required. To the
10 extent that it does, Defendant denies the allegations set forth therein.
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12 COUNT VI

13 83. Defendants incorporates herein by reference its responses to all facts and allegations
14 contained in Plaintiff's Complaint as if said responses are fully set forth at length herein.

15 84. Denied, these allegations constitute conclusions of law, and therefore no response is
16 required. To the extent that it does, Defendant denies the allegations set forth therein.
17

18 85. Denied, these allegations constitute conclusions of law, and therefore no response is
19 required. To the extent that it does, Defendant denies the allegations set forth therein.

20 86. Denied, these allegations constitute conclusions of law, and therefore no response is
21 required. To the extent that it does, Defendant denies the allegations set forth therein.
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23 87. Denied, these allegations constitute conclusions of law, and therefore no response is
24 required. To the extent that it does, Defendant denies the allegations set forth therein.

25 88. Denied, these allegations constitute conclusions of law, and therefore no response is
26 required. To the extent that it does, Defendant denies the allegations set forth therein.

27 89. Denied, these allegations constitute conclusions of law, and therefore no response is
28 required. To the extent that it does, Defendant denies the allegations set forth therein.
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30 90. Denied, these allegations constitute conclusions of law, and therefore no response is
31 required. To the extent that it does, Defendant denies the allegations set forth therein.
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1 91. Denied, these allegations constitute conclusions of law, and therefore no response is
2 required. To the extent that it does, Defendant denies the allegations set forth therein.

3 92. To the extent that paragraph 92 refers to Defendant, said paragraph is Denied, these
4 allegations constitute conclusions of law, and therefore no response is required. To the
5 extent that it does, Defendant denies the allegations set forth therein.
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7 93. Paragraph 93 requires no affirmative answer, to the extent that it does, Defendants deny all
8 allegations set forth therein.
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10 11 12 **AFFIRMATIVE DEFENSES**

13 **FIRST DEFENSE**

14 94. The Complaint, and each allegation therein, fails to state a claim upon which relief can be
15 granted.
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17 18 **SECOND DEFENSE**

19 95. At all relevant times, Defendant was in compliance with all laws and regulations set forth
20 by any and all governmental agencies and bodies.
21

22 **THIRD DEFENSE**

23 96. Any recovery by Plaintiff is barred by her own improper conduct or “unclean hands”
24 including conduct that caused or contributed to the damages Plaintiff alleges.
25

26 **FOURTH DEFENSE**

27 97. Plaintiff’s right of recovery, if any must be offset by their failure to reasonably mitigate
28 their alleged losses.
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30 31 **FIFTH DEFENSE** 32

1 98. The Complaint fails to set forth facts sufficient to constitute a claim for punitive damages
2 or exemplary damages in that neither Defendant, nor its agents, if any, acted with malice,
3 fraud, oppression, or any other state sufficient to sustain punitive or exemplary damages
4 with respect to the Plaintiff.
5

6 **SIXTH DEFENSE**

7 **99.** Plaintiffs claim may be barred by the applicable statute of limitations, estoppel waiver,
8 doctrine of laches.
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10 **SEVENTH DEFENSE**

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12 100. Defendant reserves the right to assert any and all additional defenses that discovery or
13 other evidence may reveal to be appropriate. Defendant further reserves the right to amend
14 its Answer or otherwise plead in response to plaintiff's complaint, and to file such other
15 Motions as it may deem advisable in defense of the case or as warranted by information
16 adduced through the discovery process.
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20 **WHEREFORE**, having answered the Complaint and set forth its affirmative defenses
21 thereto, Defendant respectfully requests that this court:
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- 23 a. Order that Plaintiff take nothing by her lawsuit;
24 b. Dismiss the action with Prejudice;
25 c. Award Defendant Reasonable Attorney Fees; and
26 d. Grant such other and further relief as the court deems appropriate.
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28 Respectfully submitted,

29 J. IANDOLO LAW, PC
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31 _____/s/_____
32 Jeremy M. Iandolo

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7621 13th Avenue,
Brooklyn NY 11228
718.303.0802
718.395.1732 (Fax)
jiandolo@jiandololaw.com